

**REDACTED****UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

THOMAS LAUMANN, FERNANDA GARBER,	)	
ROBERT SILVER, and PETER HERMAN,	)	
representing themselves and all others similarly	)	
situated,	)	12-cv-1817 (SAS)
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
NATIONAL HOCKEY LEAGUE et al.,	)	
	)	
Defendants.	)	
	)	
	)	
FERNANDA GARBER, MARC LERNER,	)	
DEREK RASMUSSEN, and ROBERT SILVER,	)	
representing themselves and all others similarly	)	
situated,	)	12-cv-3704 (SAS)
	)	
Plaintiffs,	)	ECF Case
	)	
v.	)	<u>Electronically Filed</u>
	)	
OFFICE OF THE COMMISSIONER OF	)	
BASEBALL et al.,	)	
	)	
Defendants.	)	
	)	

**DECLARATION OF JOHN WILDHACK**

I, JOHN WILDHACK, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the Executive Vice President, programming and production, at ESPN, Inc. ("ESPN"). I have held a series of executive positions within ESPN's programming department for twenty years. Among other things, I have been involved in the negotiation of ESPN's programming agreements with Major League Baseball and other major sports organizations. The facts stated herein are based on my personal knowledge, as well as my familiarity with ESPN's history, business records, and procedures.

2. ESPN is a sports media company based in Bristol, Connecticut. ESPN owns various sports networks, including the ESPN and ESPN2 national cable networks. As of February 2014, ESPN was delivered to 87,211,364 subscribers to multichannel video programming services (e.g., cable, satellite and teleo) and ESPN2 was delivered to 86,873,567 subscribers households (both of which are in excess of 80% of households subscribing to multichannel video programming services as reported by A.C. Nielsen & Co.).

3. In 2014, ESPN will begin its 25<sup>th</sup> year of televising Major League Baseball ("MLB") games under a series of licenses negotiated with the Office of the Commissioner of Baseball ("Baseball") on behalf of the Major League Clubs ("Clubs"). During the 2013 season, ESPN televised 80 regular-season MLB games and seven pre-season games under its agreement with Baseball.

4. Among the most significant provisions of ESPN's license agreements with Baseball is the grant to ESPN of certain exclusive national telecast rights. Specifically, ESPN is, with limited exceptions, the only entity telecasting MLB games on Sunday night, and the only

network telecasting MLB games on a national basis on Monday and Wednesday nights and within certain other periods of time.

5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] There are certain instances in which a licensee of the Club (e.g., a regional sports network or a local television station) is the exclusive telecaster in its home territory of the game it shares with ESPN, with ESPN "blacking out" that game in the participants' home territories and importing a different, additional game into that territory. There are also limited instances in which ESPN's telecast and the telecast licensed by the Club co-exist (i.e., are simultaneously broadcast) in the Club's home territory (but the Club does not telecast nationally). Finally, as noted above, on Sunday nights, ESPN is the sole telecaster of MLB games in the United States, with certain very limited exceptions, such as for teams affected by daytime summer temperatures and weather-related rescheduling. [REDACTED]

[REDACTED]

[REDACTED]

6. ESPN earns revenue principally by charging for advertising time during ESPN programming and by charging distributors for the right to distribute ESPN's programming. The exclusivity granted by Baseball is therefore significant to ESPN because, typically, the greater the exclusivity, the less fracturing of the audience that is interested in MLB games. A less fractured audience translates into potentially higher advertising revenues for ESPN and also makes the affected networks more attractive to cable, satellite, and other distributors.

7. ESPN invests significant sums to acquire these exclusive national rights from Baseball and to produce and nationally televise the games under its license agreements with Baseball.

8. The exclusivity ESPN negotiates and pays for incentivizes greater investment by ESPN in the production of Baseball telecasts. Diluting exclusivity, conversely, results in less investment, because it is more difficult for ESPN to attract and retain viewers when the same core content – the specific game or another national game – is available on another network. Specifically, ESPN generally uses a larger equipment complement, a more seasoned production team and its more prominent announcers on its Sunday night telecasts than those on other nights.

9. ESPN makes the greatest expenditures on production values for its exclusive Sunday Night Baseball programming versus MLB games on other nights, resulting in higher quality sports programming with resulting benefits to viewers. Thus, ESPN's Sunday Night Baseball is highly valuable, destination viewing for MLB fans.

10. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. [REDACTED]

13. [REDACTED]

14. These provisions support the exclusivities that incentivize ESPN to produce and provide high-quality entertainment to fans.

15. [REDACTED]

[REDACTED] Specifically, simultaneous national telecasts of different MLB games would fragment the national audience, thereby making less of the audience available for viewing ESPN's programming and likely resulting in decreased ratings. Lower ratings would, in turn, likely result in less advertising revenue. Lower ratings would also make ESPN's networks less attractive to cable and satellite distributors.

16. To the extent that ESPN's audience and revenue potential decreases, the value of the rights licensed from Baseball also decreases. ESPN likely would pay less for the rights it licenses from Baseball if multiple (indeed, up to 30) individual Clubs were licensing telecasts in the national television market, particularly if those Club national telecasts were aired at or around the same time as the ESPN telecasts.

17. The impact on ESPN and on the value of rights licensed from Baseball would be even more adverse if the *same game* ESPN telecasts under its license from Baseball were also licensed for overlapping national telecasts by the individual Clubs playing that game. In such case, ESPN would have no exclusive game distribution rights anywhere in the United States. The Club's telecast would be an alternative for ESPN's current advertisers, and for viewers seeking the content. This commoditization of the game would substantially decrease its value to ESPN.

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. The general principles discussed above relating to the importance to ESPN of national exclusivity also applied to ESPN's relationship with the National Hockey League ("NHL"). When ESPN telecast NHL games during portions of the 1980's and 1990's, it considered the degree of national exclusivity it was provided to be a material element of its agreements with the NHL. [REDACTED]

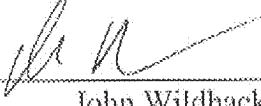
[REDACTED]

[REDACTED]

[REDACTED]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 7, 2014 in Baltimore, MD.

  
John Wildhack